

29th November 1923]

[Mr. S. Satyamurti]

the proceedings shall be in English. But any Member who is not fluent in English may address the Council in any other language as Tamil, Telugu, Kanarese and Malayalam (cries of 'Urdu' from the Muhammadan block). I thought Urdu was a classical language. But I shall include it if you want. My submission is that the proviso which runs thus :

' Provided that the President may call on any Member to speak in any language in which he is known to be proficient '

also includes English. A particular hon. Member may be proficient in English and Tamil, or English and Telugu, or English, Tamil and Telugu. I suggest to this House that to meet the contingency where one Member has got to be answered by another Member and if the answerer knows the language of the questioner it is perfectly competent to the Chair to call upon the Member to speak in the vernacular, provided the Chair is satisfied that the questioner is not proficient in English. I do not think that the interpretation put upon the words 'in any language' by the hon. the Law Member is borne out by the rules. I therefore suggest not only as a matter of interpretation, but as a matter of intent, that it certainly means that the Member of the House who knows both English and Tamil or some other language may be allowed to speak in any language provided the President allows him to do so."

The RAJA OF RAMNAD (*from the Chair*):—"I think the matter ought to be further considered and a ruling given. For our present purpose I think the question does not arise at all inasmuch as the hon. Mr. Patro did not address the House, but addressed the individual member. He spoke to the other hon. Member in Telugu as he could not understand English. The President can permit any member to speak in any language in which he is known to be proficient. I take it that the hon. Mr. Patro is proficient in Telugu also. Therefore, I think, without committing myself, it will be advantageous to proceed with the work and take the sense of the House in regard to the motion of the hon. the Home Member."

The hon. Mr. C. P. RAMASWAMI AYYAR:—"I bow to your tentative ruling."

The motion was put and carried and the appropriation was allowed.

IX

A BILL FURTHER TO AMEND THE COURT FEES ACT, 1870, IN ITS APPLICATION TO THE PRESIDENCY OF MADRAS.

The hon. Mr. C. P. RAMASWAMI AYYAR:—"Sir, I desire to introduce this Bill further to amend the Court Fees Act in its application to the Presidency of Madras, and I move that it be read in Council. In so doing, I think it would be necessary to make one or two remarks of a preliminary character. Hon. Members of this House will be aware that this Court Fees Act has been recently amended. I think two opinions have been held as to the effect of that amendment. While not desiring to commit either Government collectively, or myself or the hon. the Finance Member individually to any particular course of action, I think it may be found necessary very shortly to go into the whole question of the rate of fees to be levied under the Court Fees Act. It has been found that the objects which the framers of the amendment had

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in their mind have not only been carried out in the result, and it may also be that the incidence of the court fees has turned out to be more unequal than they were originally contemplated to be. But, as I said, this is only a tentative and preliminary observation. I am trying to make it abundantly clear that any motion to be made will not preclude the Government from further action and the Government, as at present advised, in all probability will take steps to equalize the incidence and, if necessary, to amend the scale.

“ Having said so much, let me go to the facts of the matter. Hon. Members will see that there are two points which are referred to in the Statement of Objects and Reasons. The first is the Court Fees Act schedule itself. I think the old amendment was slightly unhappy and the amendment was made in great haste as hon. Members of the old House will readily recognize and what happened then was that, as the amendment of the Court Fees Act stands, the mukthiarnama or vakalatnama or any paper sent by an advocate signifying that he is retained by a party will have to bear a certain fee. As the amendment now stands, it is only the paper signed by the advocate that will have to bear the fees and not that of the vakil or attorney. The question now arises as regards the Criminal Rules of Practice. As per rule 141 of the Criminal Rules of Practice, the matter stands thus. If a vakalat or memorandum of appearance has to be filed on behalf of an accused person, no court fee need be paid. As the rules at present stand, a certain scale of fees has to be paid by the advocate. If the vakil appears, no fee is leviable. In order to remove that inequality to which attention has been drawn, this particular amendment is brought forward. I move that this Bill be read in Council.”

The hon. Rao Bahadur A. P. PATRO :—“ I second it.”

Rao Bahadur O. TANIKACHALA CHETTIYAR :—“ Before the Bill is proceeded with, may I ask the hon. Member what the amount of revenue that will be derived by this amendment will be? For, I see in the Statement of Objects and Reasons that this Bill is proposed, or rather this amendment is proposed, in the interests of uniformity and in the interests of revenue. If it is a question of uniformity, I have other remedies to suggest. If it is a question of revenue, let the House know how much the revenue will be, and what the necessity for the raising of this additional revenue is.”

Rao Bahadur A. S. KRISHNA RAO PANTULU :—“ Sir, I think that, even from the standpoint of the hon. the Law Member, this Council will not be well advised in proceeding with this Bill.”

Rao Bahadur O. TANIKACHALA CHETTIYAR :—“ I asked for some information. I have not made my speech on this.”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ I think not less than about 2½ to 3 lakhs.”

Rao Bahadur A. S. KRISHNA RAO PANTULU :—“ Sir, it has been pointed out by the hon. the Law Member that the results expected from the previous Amending Bill have not been realized to the extent expected and that it is necessary to further amend the Court Fees Act so as to equalize the incidence of court fees. It means that even if an amendment is passed by this House by means of this Bill, it is likely to be tentative for the time being in the absence of any definite statement as to the possibilities of further amendments to the Act. We have been told that the object of this Bill is to remove the anomaly that while an advocate who files a

12-15 p.m

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memorandum of appearance is called upon to pay a court fee, the vakil is not required to do so. May I point out that the circumstances under which that exemption was incorporated in the Criminal Rules of Practice have to be specially taken into account before the so-called anomaly is tried to be remedied by means of this measure? There is a wide difference between the liberty given to an advocate to file a memorandum of appearance without a vakalat and the liberty given to a vakil to file a memorandum of appearance in criminal cases. On special consideration of the circumstances under which persons have to retain vakils to defend them in criminal cases in several rural areas where there are no special facilities and on other considerations, that provision was incorporated in the Act; and no satisfactory reasons have been shown as to why such a provision is to be abrogated just at present. If we have definite information as to the large additional revenue which is likely to be realized by means of this amendment, it would have been a different thing altogether. It is stated that an income of 2 lakhs of rupees or thereabouts may be realized thereby."

The hon. Mr. C. P. RAMASWAMI AYYAR :—" I wish, with your permission, Sir, to make a personal explanation which will clear up matters. On account of the previous amendment, we are losing 2½ to 3 lakhs which we might be getting because that amendment applied only to advocates and not to vakils. Under the law as it stands at present, a memorandum of appearance filed by an advocate is subject to the duty, but if a vakil files it, it is not subject to the duty."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" If the amendment now moved by the hon. the Law Member would preserve the state of things which existed before the last amendment, nobody would object to it. But by this amendment, vakils who were filing memorandum of appearance without any duty are now called upon to pay stamp duty. That is the additional burden which is tried to be imposed by means of this Bill. If the present Bill is calculated to guard against the loss of revenue occasioned by the previous Amending Bill, I would not quarrel with that position. But the result of this Bill will be to impose an additional hardship on the unfortunate litigants in criminal cases who will find it difficult to bear the extra fee. I would, therefore, submit that so long as this Bill is not calculated to protect the loss of revenue which is supposed to have resulted by the previous Amending Bill and since it imposes additional taxation, it is my duty to oppose it. If, after a very careful consideration of the question, the hon. the Law Member finds it necessary to equalize the incidence of taxation, he can come forward with another consolidated Amending Bill. But so far as this particular Bill is concerned, it is calculated to increase the burden of persons involved in criminal cases and I have, therefore, to oppose it."

Mr. P. SIVA RAO :—" Mr. President, I rise to oppose this Bill. In the Statement of Objects and Reasons of this Bill a twofold reason is given for the proposed amendment. The first is 'in the interests of uniformity' and the second is 'in the interests of revenue'. Now, before I proceed further, I may explain to the hon. Members of this House the precise state of things before the Amending Act of 1922 was passed. As a Member of the Legislative Council at the time when the Bill was taken into consideration, I know, Sir, what effect it had, whether the revenues were augmented, or whether they suffered in consequence. Before the Bill of 1922 was passed, a memorandum of appearance filed by an advocate, including a barrister, was not

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subjected to any stamp duty. For the first time it was found out just for purposes of revenue that there was no reason whatever why a vakalat filed by a legal practitioner, other than an advocate, including a barrister, should bear the court fee stamp and why the memorandum filed by an advocate should be exempt from such a duty. To remove that anomaly and also in the interests of our revenue, it was proposed and carried that not merely the vakalats filed by the vakils but also the memoranda of appearance filed by advocates should bear the necessary court fee. The certain effect of that proposal was to augment the revenue under the head of court fees and not to reduce it. I say this in order to clear the misconception on the part of the hon. the Law Member. I understand him to say that by reason of this amendment, we have been losing a certain portion of the revenue which we had enjoyed before the amendment was made."

The hon. Mr. C. P. RAMASWAMI AYYAR :—" I am afraid my hon. Friend did not hear me aright. I was saying that by reason of the previous amendment having been passed in that form, we were losing some revenue."

Mr. P. SIVA RAO :—" Coming again to the state of things that prevailed before the Amending Bill of 1922 was passed, a vakalat filed by a legal practitioner, other than an advocate, ought to bear a stamp duty of half a rupee, but the memoranda of appearance filed by a legal practitioner on behalf of the accused person need not be affixed with a court fee of 8 annas. That was a special rule framed in the interests of the accused person and not in the interests of the legal practitioners; because, under the Criminal Procedure Code, there is a distinct provision that every accused person should, as a matter of right, be defended by a pleader, and it was thought desirable that by no legislation should such a right be fettered. It was acting on that principle that memoranda of appearance filed on behalf of accused were not subjected to the payment of court fee. There is also a provision in the case of appeals filed by men in jail. If a man in jail files a criminal appeal, the appeal memorandum need not be stamped. All these are based on the excellent principle that the accused should be allowed to have full latitude in choosing his own legal adviser untrammelled by any taxation. Such a beneficent provision in the case of accused persons is now sought to be taken away for the first time by this Amending Bill. In the interests of accused persons, I strongly protest against the passing of this measure. If any inequality is said to exist and it is to be removed, I propose that even the memoranda of appearance filed by an advocate on behalf of the accused should be exempted from taxation. By introducing such a change, we shall be restoring uniformity. I may say for the information of hon. Members of the House that the prevailing practice is that when a legal practitioner files a vakalat, say for the conduct of a prosecution in a criminal case, he ought to pay the necessary court fee. The exemption exists only in the case of memoranda of appearance filed on behalf of the accused. There is more than one reason why such an exemption from payment of court fee should be retained. Hence I oppose this Bill."

Mr. G. RAMESWARA RAO :—" Sir, going to the old state of affairs, the Imperial Act levied court fees only upon a vakalat and a mukthiarnama. Then came the Madras Amendment Bill which taxed also the memoranda filed by advocates. Comparing the old state of things with the present, we have made a decided advance in the matter of revenue. What is now sought to be

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done is to tax us further by saying that the memoranda of appearance which were not taxed hitherto should be made liable to taxation; and it is surreptitiously put forward that they want to remedy an anomaly."

The hon. Mr. C. P. RAMASWAMI AYYAR :—"There is nothing surreptitious about it."

Mr. G. RAMESWARA RAO :—"I beg his pardon. I mean, it is not the very best way to put the case for the Government to say that there was an omission then. It cannot be an omission because everybody connected with the last Bill must have known what the result of the amendment would be at that time. The position is clear enough. If, as a matter of fact, the revenue was raised by taxing the memoranda of appearance filed by advocates, there is absolutely no justification to tax the memoranda of appearance filed by vakils. If at all there is any anomaly in this, I submit that there are lots of anomalies in the field of law which need amendment. For instance, a barrister by virtue of his position, as a relic of ancient history, is allowed to file a memorandum of appearance instead of a vakalat. But when a vakil appears in a court of law he has to file a vakalat signed by the client and attested by a magistrate, as if the vakil's word cannot be taken for truth. This anomaly is perpetuated every day in our country. If such anomalies are perpetuated with eyes wide open, I submit that the fact that this particular anomaly is sought to be remedied now only for purposes of uniformity is an argument which I for my part fail to appreciate. If it is put forward on the ground of taxation, I submit it is not a very good augury for the beginning of the first session of the Legislative Council.

12-30 p.m. "People are complaining that they are already overtaxed and that the Council has not done anything good for the country. Now, if we add to their burden by giving our consent to the passing of this amendment, we will be subjecting ourselves to their blame.

"Again, Sir, if this amendment is brought forward on the ground of uniformity and as a remedy for avoiding certain anomalies, I submit that remedies should also be found for placing all the legal practitioners on a par. So far as those differences are being perpetuated, the theory of uniformity does not also hold water. On these grounds I oppose the amendment."

Rai Bahadur T. M. NARASIMHACHARLU :—"I also oppose this Amending Bill. I do not know whether the advocates made any complaint at all."

The hon. Mr. C. P. RAMASWAMI AYYAR :—"Yes."

Rai Bahadur T. M. NARASIMHACHARLU :—"The hon. the Law Member says that the Advocates made a complaint when they were asked to pay court fees in criminal cases. The best remedy is to exempt advocates also from paying court fees in criminal cases. Instead of doing that, the Government have taken advantage of that complaint to increase their revenue. I submit that is not the proper way of doing things. As Mr. Siva Rao pointed out, it is the right of every accused person in a criminal case to be defended by a pleader. That is a statutory provision made in the Criminal Procedure Code. When that has been conceded by the Act, I cannot see how Government can insist on the accused person paying a certain amount of court fees when he wishes to appear by a pleader. This is a vital objection to the course adopted by the hon. the Law Member.

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"Secondly, in considering the prestige and dignity of the advocate, we lose sight of the poor tax-payer. In the last amended Court Fees Act we have raised the court fees, so far as vakalatnama is concerned, by 100 per cent especially in the mufassal. Where it was only $\frac{1}{2}$ a rupee previously, it is now Re. 1. Who suffers by this enhancement? It is not the pleader, but it is the litigant public who unfortunately have to go to courts. I, therefore, submit that, in trying to remove an anomaly, we are proposing an additional taxation on the people; and what will be the result? The result will be, as the hon. the Law Member has just now told us, a further income of $2\frac{1}{2}$ or 3 lakhs of rupees to the Government. I submit that, if the advocates complained, the only way of removing the complaint is to exempt them from payment of court fees in filing any memorandum of appearance and not to extend the same cause of complaint to other legal practitioners who are practising in the City as well as in the mufassal. I submit, Sir, that on no considerations whatsoever is this kind of enhancement commendable.

"Again, the hon. the Law Member has just now told us that Government is contemplating to revise the Court Fees Act in the near future. If that is so, what is the special hurry. The hon. Member began by saying that the last legislation was somewhat hastily passed. May I point out, Sir, that now also he wants to follow the same example by not only trying to introduce this Bill, but also by seeing that no Select Committee is appointed and that the Bill is passed at once? I, therefore, submit that the procedure adopted in trying to pass this Bill at once is equally hasty as it was in the case of the previous Amending Bill. I may add, Sir, that if this Amending Bill is passed, it will prove to be very burdensome on the poor tax-payer. For these reasons, I oppose the Amending Bill."

Rao Bahadur C. V. S. NARASIMHARAJU :—"Mr. President, hon. Members who were in the old Council would remember that it was not an amendment that was introduced from the Treasury Bench in the original Bill. We, the old members, do well remember the controversy between the vakil and advocate members of this Council. When the Advocate members did not support the vakil element for the reduction of the enrolment fees, the vakil members, perhaps including my humble self, took cudgels against the advocate members and wanted to penalize them. A perusal of the proceedings will clear this matter, and show that Government never wanted to tax this particular item, namely, the memorandum filed by an advocate in any court. Mr. Arumainatha Pillai introduced an amendment at that time, rather with an inconvenient wording. Truly it was hastily accepted by the House. Then the hon. the Finance Member referred to his own experience in the High Court, as Registrar or otherwise, and also to the fact as to how advocates put in their memoranda of appearance and avoided payment of vakalat fees and how he tried to devise one or two methods of compelling the payment of court fees and how he failed in his methods. The whole discussion was then concentrated on the payment of court fees by advocates in civil courts. I do not think for one moment that any advocate of the legal profession should be taxed for putting in an appearance in a criminal case. It is a matter of experience that, when a vakil appears for a complainant in a criminal case, he files a vakalat and the court fees are paid. The hon. the Law Member says not necessarily. All right. But the practice was that, whoever appeared for a case in a criminal court, be he an advocate or a vakil, no court fees were paid on account of appearance for an accused. It was never the intention

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of the Government to revise that method. Even when they introduced the Court Fees Amendment Act, it was simply because the amendment of Mr. Arumainatha Pillai was carried in this House that the advocates were made to pay court fees on memoranda of appearance."

The hon. Mr. C. P. RAMASWAMI AYYAR :—" I think I might shorten the discussion. I realize that there is much feeling in this House that the poor accused ought not to be mulcted. I am perfectly prepared to exempt them from payment of court fees after this Bill goes into Select Committee. I am only suggesting this as a way out of the discussion."

Rao Bahadur C. V. S. NARASIMHA RAJU :—" Mr. President, the question before the House is whether the court fees shall be payable only in civil courts or, in the case of complainants, in criminal courts also. As far as the question of payment of court fees by a complainant is concerned, it is only a question which can be examined in the Select Committee, and it will be brought before this House after examination by that Committee. The hon. the Law Member is willing to exempt the case of an accused from payment of court fees."

Sir K. VENKATAREDDI NAYUDU :—" As the hon. the Law Member said, when the last amendment was accepted, it was understood that court fees had to be charged on memoranda filed by advocates. We were thinking of only civil suits. Thousands and thousands of batches of civil suits and appeals are being filed in civil courts and the common device for litigants in the mufassal was, instead of paying half a rupee for every single suit, which meant Rs. 500 for 1,000 suits, to pay Rs. 500 for 1,000 or 2,000 such suits and engage an advocate even if one was not available in the locality. It was to put an end to that device that the previous amendment was introduced.

" I have been under the impression that in a criminal case when a memorandum of appearance was put in, be he an advocate or a vakil or any other legal practitioner, no stamp fee was required. Now, Sir, I should like to refer to one other point, and that is, occasions may arise when appearances before a magistrate may be so very imminent. The prisoner may be in jail or may be under peculiar circumstances when, if he is asked to go and fetch stamp, it may take sometime and during that period the man has to be in custody. There are occasions which require immediate appearance before a magistrate and the absence of stamp might involve great difficulties. In order to avoid those difficulties, this privilege, i.e., to have his vakil or legal practitioner appear for him without stamp, was accorded to the accused. It was, I think, intended that it must be given as a concession and privilege to a man peculiarly situated under difficult circumstances when immediate remedy should be made available. The question is whether such a privilege to an accused person placed in embarrassing circumstances applies only to persons in custody, or whether it would be right for the sake of 2½ lakhs or 3 lakhs of rupees that such a privilege and right should be taken away by an amendment introduced in this Council."

Dr. P. SUBBARAYAN :—" Mr. President, when the amendment levying fees on advocate's memorandum was proposed last time, I rose to oppose it. Now, again, I want to oppose this amendment on the ground that it would be taxing the poor man. Very likely, he cannot afford to employ costly advocates. There are small pleaders and private vakils who might be engaged in criminal

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proceedings. They would appear for a trifle and, if this amendment is passed, it would be adding additional burden on the poor man. On this ground, I oppose this motion."

The hon. Mr. C. P. RAMASWAMI AYYAR :—"Sir, as will be apparent from the agenda, it was proposed at first that we should
12-45 p.m. proceed with the Bill without referring it to the Select Committee. I fully realize the volume of the weight of opposition in regard to this matter and I am prepared, out of deference to it, to have the matter examined by the Select Committee. As I said, I am indebted to many hon. Members who drew my attention to the history of this enactment. It really arose out of what may be called professional and internecine quarrels. Barristers and advocate members of this hon. House would not support a motion for the reduction of the enrolment fee of the vakil, and the vakil members of the House got up and insisted that the advocates should pay a certain duty on these memoranda. That was the psychological history of this enactment."

Dr. P. SUBBARAYAN :—"May I correct the hon. the Law Member, Sir? The amendment about the filing of memorandum of appearance came first and then came the raising of the fees for the enrolment of vakils."

The hon. Mr. C. P. RAMASWAMI AYYAR :—"In any case, I think considerations somewhat foreign to what may be called intrinsic merits—I say that with all due deference and with the respect I always pay to the decision of this House,—considerations which were not weighty, were brought into discussion. Now, what is suggested is this: it would be a wrong thing to compel the poor accused who sometimes would not be in a position to pay for the stamp duty; it would be wrong to subject him to the payment of that duty. Now, that might be got rid of in the Select Committee and the operation of this enactment may be confined to complainants and other private parties who are concerned in criminal cases and also opportunity may be taken to raise up or level down the stamp duty as the Committee deem fit. It is with that object that I gave the assurance to refer the Bill to a Select Committee. I hope this assurance will satisfy hon. Members."

Mr. S. SATYAMURTI :—"I quite appreciate the hon. the Law Member's response to the eloquent appeal of the Leader of the House yesterday for a spirit of compromise. I quite realize that he has noted the feeling of this House that we do not propose to become parties to taxing justice, taxing the poor man when he is dragged before a court of law. But I am afraid I cannot congratulate the hon. the Law Member in having dragged in a previous discussion and tried to show that barristers and vakils showed their professional quarrels. I am quite sure I can speak for all members of this House whether barristers or vakils or non-barristers or non-vakils. . . ."

The hon. Mr. C. P. RAMASWAMI AYYAR :—"I referred to the last House only and I did not say that there was internecine feud among the various Members of the legal profession in this House."

Mr. S. SATYAMURTI :—"I am glad of that assurance. We are all agreed that the poor man ought not to be taxed. I quite appreciate the hon. the Law Member's change of mind when he said that he was prepared to refer this Bill to the Select Committee. I take it that before a Bill goes to

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a Select Committee, there ought to be something for the Committee to consider. Let the hon. the Law Member give us this assurance that persons appearing for cases in criminal courts will be exempted from paying this fee on the memoranda of appearance. Even persons appearing for the complainant in the mufassal courts, very often, have to pay this fee on their vakalats."

The hon. Mr. C. P. RAMASWAMI AYYAR:—"They need not pay under the rules."

Mr. S. SATYAMURTI:—"That is a matter entirely for the High Court, and if the High Court feels that the existing rules and practices in this respect ought to be amended, they should insist upon changing the rules."

The hon. Mr. C. P. RAMASWAMI AYYAR:—"Mr. President, the High Court may propose to change the rules making stamp duty compulsory in vakalats. If I asked the High Court to do that, I need not have come before the House and it is because I thought that the sentiments of this House ought to be respected that I have come before it with this Bill."

Mr. S. SATYAMURTI:—"Since the hon. the Law Member has come before the House to take its sense, I would humbly and respectfully submit that the sense of the House is against this taxation. I was saying that if the High Court wanted, they might do it. My point is this: There is nothing to go before the Select Committee and I do not think that this House would agree to the proposal for referring this Bill to a Select Committee. The question is whether the House is agreeable to the principle of making money out of justice. I cannot agree with the hon. the Law Member that even this magnificent sum of 2½ or 3 lakhs should be raised by this kind of taxation. This House ought not to be a party to this kind of making money out of justice."

"Now for the anomaly of it, I am sure there are many other anomalies in dealing out justice; and since we can all allow our legal and legislative consciences to rest quiet over those anomalies, let this anomaly also exist. If the hon. the Law Member is anxious to remove this anomaly on behalf of the vakils, the advocates may also be exempted from paying for stamps in criminal cases; and, the legitimate way of removing this anomaly, if it ought to be removed, is to declare that the advocates also need not pay. The poor clients who go before the courts should not be taxed further. Further, as my hon. Friend said, this is not the proper way of beginning the first session of this Council."

"I only want to ask one question. I am sorry the Leader of the party is not here. We are anxious to know what the lead of that party on this matter is. We were told yesterday, in another connexion, that there must be a spirit of give and take. The Reserved half gave their votes freely yesterday and, is the Transferred half going to give freely the money of the poor clients to the Reserved half? That is a question which this House is bound to answer and I would leave it to my hon. Friends who are the leaders of the party in power with a glorious, magnificent majority of two. . . ."

Mr. C. RAMALINGA REDDI:—"One."

Mr. S. SATYAMURTI:—"with a glorious, magnificent majority of one, who are still sitting in office supported by that magnificent majority, to say whether they, in the rejuvenated life in which they glory, out of eternal

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The hon. Rao Bahadur A. P. PATRO :—" I second the Motion."

The Motion was put and carried

The hon. the PRESIDENT :—" As the hon. the Finance Member says that there is not so much urgency about the appointment of this Committee as for the Finance Committee, I shall fix a date for sending in nominations when the Council next meets.

V

ELECTION OF MEMBERS TO THE HOUSE COMMITTEE.

The hon. Sir CHARLES TODHUNTER :—" Mr. President, with reference to Standing Order No. 80, which requires that at the commencement of each session a House Committee should be appointed to consider and advise upon all matters connected with the comfort and convenience of Members of the Council, I beg to move :—

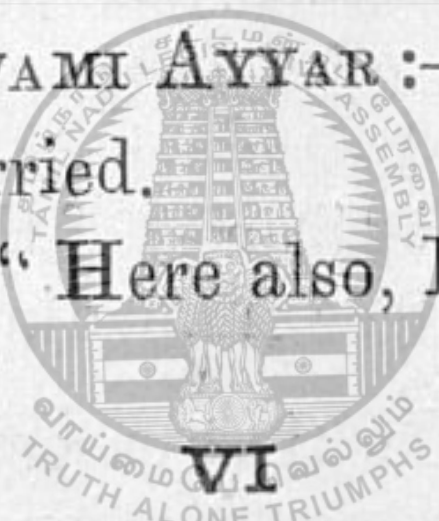
'That, with a view to appoint a House Committee, in pursuance of Standing Order No. 80, this Council do proceed to elect six Members to be Members of the said Committee, according to the principle of proportionate representation by means of a single transferable vote.'

and to ask you to fix an hour before which nominations should be sent. There is no urgency about this Committee also.

The hon. Mr. C. P. RAMASWAMI AYYAR :—" I second it."

The Motion was put and carried.

The hon. the PRESIDENT :—" Here also, I shall fix a date and an hour when we next meet."

VI
ELECTION OF MEMBERS TO THE BOARD OF INDUSTRIES.

The hon. Diwan Bahadur T. N. SIVAGNANAM PILLAI :—" Mr. President, I beg to move :—

'That, in accordance with section 3 (1) (b) of the Madras State Aid to Industries Act (Act V of 1923) and rule 3 of the rules framed under the said Act, this Council do proceed, on a date to be fixed by the hon. the President, to elect two persons to be the Council's representatives on the Board of Industries to be constituted under the Act.'

"The Act provides for the constitution of a Board of Industries. One of its duties will be the disposal of the several applications which are being received from time to time in connexion with the disbursement of the State loans for which a sum of Rs. 8 lakhs has been placed at my disposal. That was done only recently, and so it was possible to bring up the subject only just now, and I request the hon. the President to fix an early date for proceeding with this matter."

The hon. Rao Bahadur A. P. PATRO :—" I second it."

The Motion was put and carried.

The hon. the PRESIDENT :—" Does the hon. the Minister wish me to do this immediately?"

The hon. Diwan Bahadur T. N. SIVAGNANAM PILLAI :—" Almost immediately; for, we have only a few months for the disposal of the several applications which are for more than 20 lakhs of rupees, whereas we

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no satisfactory reason has been given by my hon. Friend Mr. Ramaswami Ayyar to pass this measure from the point of view of revenue.

"Sir, I do not wish to dwell upon the other aspect of the question, viz., that of the protection of the accused, because it has been already dwelt upon at considerable length. Of course, there is no need whatever to place the accused in a criminal case under a disability. From that point of view also there is no need to pass the first reading of this Bill and send it to the Select Committee. I am, therefore, inclined to vote against this measure going forward."

Mr. C. V. VENKATARAMANA AYYANGAR :—"I just want to say one or two words. Sir, the hon. Member Mr. Krishnan Nayar said that all the Members of the former House agreed to the amendment of the Stamp Act last time."

Diwan Bahadur M. KRISHNAN NAYAR :—"A word of personal explanation, Sir. What I really meant was that the majority of Members agreed to the amendment of the Stamp Act."

Mr. C. V. VENKATARAMANA AYYANGAR :—"I am glad of that correction. I opposed the last Amending Act and one of my reasons for opposing the amendment of the Stamp Act was that there was absolutely no necessity for that in view of the fact that the necessary sum could have been got by retrenchment or otherwise. The only argument now put forward by the hon. the Law Member for amending this Act is that this might probably give the Government a sum of 2½ lakhs or so. By means of this amendment, it is intended that all memoranda that are filed by vakils for prosecution or for defence should be stamped. If, as is now agreed to, the memoranda filed on behalf of the accused need not be stamped, there is very little revenue that can be expected. So far as my experience goes, there is a different procedure adopted as regards the appearance of vakils for the prosecution. In some cases, the law as it is gives full discretion to allow a vakalat or not, but many courts insist upon a vakalat. It is only in a few cases where a memorandum of appearance is allowed by a court on behalf of the prosecution that the stamp to be affixed is avoided. The cases coming under this description would be very limited. Even under the Court Fees Act some complaints are exempt from stamp duty. In cases of a serious nature if a complaint is given, no stamp is necessary at all. Even in ordinary cases in the case of poor people, the court is given the discretion of dispensing with the stamp for complaints.

"While the law ordinarily gives discretion as regards complaints in any criminal case, why should this additional tax be levied upon a poor man? In any case my view is either for the prosecution or for the defence the memorandum of appearance should not be taxed. I do not think that in the Select Committee an amendment that no fee at all be levied in criminal cases for memorandum of appearance can be brought forward."

The hon. Mr. C. P. RAMASWAMI AYYAR :—"I do not think that an amendment of such a nature can be brought forward in the Select Committee. That will mean the very negation of the Bill. All that I said was that the exemption of the accused from paying any fee can be achieved in the Select Committee."

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Mr. C. V. VENKATARAMANA AYYANGAR :—“ While that is the case, an Amending Bill may be brought forward some time later. We shall then consider whether its introduction is necessary or not. Either for the accused or for the complainant I am strongly of opinion that no fee should be insisted upon. Sometimes poor servants are ill-treated by rich men and they have to go and file complaints. In such cases vakils will demand no fee. If the complainants are asked to pay a fee of rupee one, it will be rather very hard. Therefore, I agree with my friends on both sides in opposing this measure.”

Mr. P. ANJANEYULU :—“ Sir, I come from a mufassal and those living in the mufassal places are mostly ryots. They have been under the impression that justice can be secured cheaply. I take it that this is so, because in some criminal cases where a private party puts a complaint, it is the Crown that pays for the stamps, etc. I take it that the principle is that King's justice is to be dispensed with free, cheap and to all, rich and poor alike. It is on this principle also, I suppose, even the payment of court fees are exempted in certain cases. I learn from the hon. the Law Member that it will be a source of revenue. If it is a source of revenue I take it that revenue ought to be secured, if I may say so with due respect, not by selling justice.”

Rao Bahadur O. TANIKACHALA CHETTIYAR :—“ Sir, I oppose this motion for the introduction of this Bill to the Select Committee. My Friend, Mr. Satyamurti, who is as usual on the war path, having made certain of the general sense that the House, whether on this side, or on the opposite side or on any side, is against this measure, threw a challenge to the Ministerialists to take up an attitude of opposition to him merely for the purpose of opposing him and thereby enable him to tell the country that a measure of taxation, which is opposed by one party, is being supported by the other party. I, for one, am not going to allow him the pleasure of saying outside this House that we are reactionaries (Cries of hear, hear). I agree that this measure is not justifiable. An error has been committed in the past and it is freely admitted that it has been committed to satisfy a spirit of revenge among the several kinds of legal practitioners against each other rather than in the spirit of protecting the interests of the Indian tax-payer or litigants. I would ordinarily consent to a reference being made to the select committee to bring about changes regarding matters which do not appear reasonable on the face of the Bill, but when this Bill consists of only two words—‘ legal practitioner ’ and ‘ advocate ’,—where is the necessity for referring it to a select committee? Generally, Bills are referred to select committees when there are a number of sections and provisions, some of which are considered to be necessary and some others objectionable and might be modified. Is it for the purpose of merely modifying the language of the section which consists of two words? ”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ Mr. President, Sir, it is not for the purpose of modifying the words but for enabling the sense of the House to be manifested on the proposal that I suggested that the Bill be referred to a select committee.”

Rao Bahadur O. TANIKACHALA CHETTIYAR :—“ Sir, if that is the object, I think that that object must be expressed by the House itself instead of by a few Members, because no amendment has been tabled. Select committees are but delegated authorities to express the sense of the House.

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When the sense of the House is for rejecting a measure of this kind, I think it would not be right to refer it to a few gentlemen constituting a select committee and allow it to be modified in a manner which will be beyond the recognition of its parent. Therefore, if we pass this measure or anything akin to it, we will be nullifying the provision of section 340 of the Criminal Procedure Code, which is a measure passed by the Government of India. This section says that 'every person accused before any criminal court may of right be defended by a pleader.' These persons will be affected by this amendment. I doubt very much whether this House can take away by a measure introduced here what has been granted by legislation passed by the Government of India."

The hon. Mr. C. P. RAMASWAMI AYYAR:—"The Government of India's consent has been obtained, I believe."

Rao Bahadur O. TANIKACHALA CHETTIYAR:—"However much it may not be illegal, it is open to question. I do not propose to go into the question of circumventing the right given by a measure passed by the Indian Legislature by a provision passed by the Provincial Legislature. Sir, I think it is not right that people who are obliged to defend themselves against charges brought against them and not by their seeking—in most cases it may be against their will,—should be asked to pay a fine of Re. 1 to the State on a vakalat or memorandum of appearance. If it is a luxury, something out of the way, it is but right that they must be made to pay for a memorandum of appearance, which is only a paper showing that such and such a lawyer appears for such and such an accused, and which has hitherto been in conformity with section 340 of the Criminal Procedure Code. The result of the amendment will be to require that every unfortunate person, who may after all be innocent whatever may be the result, whether he is convicted or honourably discharged, shall pay a fine of Re. 1 to the State. It is the same thing as a fine according to the original sense of the word as used in the English language. It will not be right, whether at the commencement of this Council, or at any stage, that we should sanction taxation for that purpose. If it is a question of uniformity, another Bill may be brought forward to rectify the mistake."

The hon. Sir CHARLES TODHUNTER:—"Mr. President, a reference has been made more than once to the question of revenue, whether we really require any revenue under this head. We do require a great deal and, as a matter of fact, the revenue anticipated by the amendment of the Court Fees Act has not been realized by many lakhs of rupees. But I do not think that this is primarily a revenue measure at all. Hon. Members who were present at the last Council will recollect there was no question then raised of the poor man or of the accused. What was the point then in issue? A vakalatnama was required to bear a stamp. We required the same stamp to be affixed to a memorandum of appearance by an advocate. The memorandum of appearance by a vakil escaped our notice. In fact, I may say that in my experience as a magistrate, I cannot remember ever meeting with such a memorandum. It was quite a discovery to me to find that there was this rule in the Criminal Rules of Practice. I think, moreover, that hon. Members have rather lost sight of the wording of the rule since they have laid stress all the time on the hardship of making the poor accused person pay a fee. This rule is that whenever a pleader representing a party

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to a criminal proceeding—not an accused person—does not file in court a vakalatnama from his client, such pleader shall be required to file a memorandum that he is appearing on behalf of the party whom he claims to represent. As I said, when I was a magistrate, and I think my hon. Colleague will bear me out, a memorandum of appearance of this sort was never filed. Vakalats always used to be filed. But the rule has now become better known and the profession have taken advantage of it and now we have reached the position that in some courts vakalats are never filed at all. Only memoranda of appearances are filed.

“A great deal has been said about the King’s justice. Is it the King’s justice, I would ask, to require the tax-payer to pay for a great part of the time of the criminal courts to be spent in inquiring, as it is at present, into cases of civil nature? I think hon. Members present who represent the profession will bear me out in saying that a vast amount of the time and, therefore, of money is wasted in inquiring into petty and frivolous complaints which ought to be brought in civil courts. As Mr. Venkataramana Ayyangar has said, all that is necessary is to give discretion to excuse the poor accused. My hon. Colleague is ready to meet him there. If it is a question of giving discretion to excuse the payment of a fee by a poor man, we are quite ready to do that, but not to allow persons who wish to bring petty and frivolous complaints to make the tax-payer pay for giving him an expensive trial without any charge. We are absolutely ready to meet hon. Members in the matter of discussion how to exempt the poor men, and I do ask this House to let this Bill go to the Select Committee so that they may devise a means for doing what hon. Members wish us to do.”

1-15 p.m. Mr. ABBAS ALI KHAN :—“Mr. President, Sir, I was a member of the Select Committee appointed to consider the last Court Fees Act (Amendment) Bill. The hon. the Law Member, the late Sir Srinivasa Ayyangar, then told us that barristers were not required to pay stamp duty in civil cases as vakils and that to remove the inequality, he suggested that they too should be deprived of their historic privilege and should agree for the levy, as we were living in progressive times. It was not, however, intended to mulct the barristers in criminal cases, and so I consented readily that barristers too should pay the fee on memoranda of appearance required to be filed in civil cases. Sir, after the Bill was first published, I was the first to run up to the late Law Member and tell him that when I had to appear before the courts in Madura and Ramnad, I was asked to pay one rupee stamp even in criminal cases, when he replied that he never contemplated it in the Bill. But reading the section, he admitted there was some difficulty and promised that he would rectify it by an Amending Bill. Now, Sir, when by this Amending Bill even in criminal cases the fee is sought to be levied, the sense of the House is in favour of the poor accused who should not be so mulcted. When there is a case hanging over him already, he should not be called upon to pay this additional fine. I perfectly agree with that view. Sir, there is also another alternative suggested by some hon. Members here that, for the sake of uniformity, the barristers too should be exempted from the payment of one rupee in criminal cases. But my hon. Friend, Mr. Satyamurti, said that justice should not be had on payment only of one-rupee taxation. I am afraid the hon. Member has entirely misunderstood the situation, for we have been allowing ourselves to

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be taxed for the administration of justice ; our stamp duties and other fees go towards the administration of justice. Then, Sir, the hon. the Leader of the House has asked us why the tax-payer should be mulcted for the sins of the litigant who rushes to court of law on frivolous or trivial grounds. I personally think that the complainant ought to be made to pay the one rupee and not the accused. The hon. the Law Member has, however, told us that the matter could be looked into at the Select Committee stage, and I agree with him. I, therefore, think that the Bill should be allowed to go before the Select Committee."

Mr. S. MUTTAYYA MUDALIYAR :—" Mr. President, Sir, the hon. the Leader of the House in supporting the motion observed that a good deal of time of the criminal courts was taken up in disposing of cases of a frivolous or a trivial nature and for which remedies could be got in civil courts and said that lawyer members of this House would substantiate his statement. I most humbly challenge that statement, for I feel certain that at the highest only 2 or 3 per cent of the criminal cases may have a civil litigation at the bottom. It may be so only in cases of proceedings under section 145 of the Criminal Procedure Code or in cases of technical theft which arise out of dispute as regards possession of property. I believe these are the only cases where civil disputes are sought to be settled in criminal courts and these cases will not be more than two or three per cent of the total number of cases in criminal courts. The hon. the Leader of the House also asked why the tax-payer should contribute to the luxury that complainants or accused have of support by lawyers. I believe, Sir, that the revenues of the country are raised for the protection of the person and property of the subjects and the person who goes to court goes as a tax-payer as well and he is entitled to have the protection that he seeks. What are courts of justice for and what are taxes paid for are questions which do not arise here. But I should say, Sir, that every individual is entitled to seek for protection of his person and property. In criminal courts certain people have been exempted and on certain people have been imposed a fee and the additional fee that is now sought to be imposed is not justifiable. The hon. the Law Member was of course willing to have the accused exempted from the operation of the present Amending Bill. But, Sir, I really do not see the reason why those who seek justice be taxed and those who are accused and who perhaps put in false defences should escape. My humble submission to this House is that all people who resort to criminal courts should not be made to pay any additional taxation by way of vakalatnamas or memoranda of appearance. My hon. Friend Mr. Abbas Ali Khan, who was a member of the Select Committee on the previous Amending Bill, has told us that it was never the intention of the Select Committee to tax the litigants in criminal cases and that the Bill was only intended to cover civil suits. And if that object of the Select Committee has not been properly carried out by the Statute, the remedy will be to bring an amendment to the Act so as to include even advocates among legal practitioners required to pay fees in civil cases and not, as is proposed by the present Bill, to extend the levy to criminal cases. My hon. Friend, Mr. Satyamurti said that the party in power which leads by a glorious majority of one, as he said, has not given the lead in this matter and in spite of his challenge, the Leader on the Ministerial Benches has not yet told us what the view of the party is on the matter. Mr. Satyamurti said

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that the party was leading by a majority of one, but, Sir, I think he is not correct. It seems to be leading by a minority of two for, Sir, the voting of yesterday. . . ."

Rao Bahadur O. TANIKACHALA CHETTIYAR :—" Mr. President, is the voting of yesterday relevant to the discussion on this Bill ?"

The hon. the PRESIDENT :—" I may say at this stage, probably to the convenience of hon. Members, that I am going to make an announcement just before we rise for lunch as to what exactly is the voting. So, if hon. Members will keep patient just for a few minutes, they will be gratified to have the actual figures of the voting. The hon. Member, Mr. Muttayya Mudaliyar, may now go on with the Court Fees Act (laughter)."

Mr. S. MUTTAYYA MUDALIYAR :—" The remark was made about the party in power and if, Sir, you think it is not necessary, I will leave it there. I submit to this House that there is absolutely no reason for allowing this Bill to go to the Select Committee. The hon. the Law Member was kind enough to say that the Select Committee can consider the question of exemption of the accused. His estimate by way of revenue was about $2\frac{1}{2}$ lakhs and if the accused is exempted from payment, I take it that the additional income will only be about half of it. From the statement of the hon. the Finance Member it did not appear that the Government was in need of this additional income. And even if further revenues were needed, I wish once more to reiterate the statement already made that it is not advisable to introduce this Bill at the very first meeting of this Council. I wish to call upon the Ministers to give us the assurance that they do not treat this as a party measure and give the lead to this House by asking it to vote unanimously against it."

Mr. C. MUTTAYYA MUDALIYAR :—" Sir, as a new member of this House, I do not want to give my support at the very outset to a proposal for additional taxation. Whatever anomalies there may be in the existing law, and I am afraid there are too many of them, I do not want to meet them by proposals involving additional taxation. The hon. the Law Member can seek to remove the anomalies that at present do exist without an additional levy of this kind. That, Sir, is the feeling of all parties in this House. I do not think, Sir, it is necessary to refer it to a Select Committee, and I strongly oppose the motion."

Mr. R. SRINIVASA AYYANGAR :—" Mr. President, Sir, I am one of those who believe that Government have absolutely no right to make any money or profit out of the administration of criminal justice and that criminal courts ought not to be used as media for getting income to the State. If I understood the hon. the Leader of the House aright, he made a significant statement that a great deal of time of the criminal courts was being taken up by disposal of petty or frivolous complaints or complaints of a civil nature. If that is really so, sufficient remedy is provided for in the Criminal Procedure Code itself. Section 203 of the Code confers on the magistracy powers enabling them to dismiss complaints of a civil nature or frivolous or vexatious complaints. To ignore the remedy that exists at present and to penalise a large number of persons

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who unfortunately are driven to criminal courts is arguing in a vicious circle, and I am sorry to say that the time taken by the courts in this direction is not altogether a defensible point. It is a matter of common knowledge that for nearly sixty years, ever since the Act of 1861 was placed on the Statute Book, accused persons have not been asked to pay a court-fee and legal practitioners were appearing on their behalf. Time was, years ago, when we appeared on behalf of the accused, we said simply: 'we appear for so and so, accused' and we never used to file a memorandum. Thereafter, the rule 141 of the Criminal Rules came into operation and since then we have been simply filing memoranda of appearance. There is no reason or justification, and no case has been made out for taking away the privileges which have been enjoyed hitherto without any question and without any interruption for a long number of years. And it is also a matter of common knowledge that accused persons are obliged to incur heavy charges and I believe it is within the recollection of this House that quite recently even the price of copy stamps has been raised from 2 to 3 annas. All things considered, I venture to submit, it is incumbent upon us to vote against the introduction of this Bill."

X

APPROVAL BY HIS EXCELLENCY THE GOVERNOR OF THE ELECTION OF
DEPUTY PRESIDENT.

The hon. the PRESIDENT :—"Before the House rises for lunch, I have to inform hon. Members that His Excellency the Governor has been pleased to approve the election of Diwan Bahadur P. Kesava Pillai as Deputy President."

XI

ANALYSIS OF VOTING ON THE 'NO CONFIDENCE' MOTION.

Mr. C. RAMALINGA REDDI :—"Mr. President, with reference, Sir, to the debate which took place yesterday, I beg to thank you for having allowed a question of which I gave private and, I am afraid, very inadequate notice. I wish to know, Sir, if any analysis has been made of the votes that took place yesterday, especially with reference to one of the points mentioned in the terms of the address, namely, that the composition of the Ministry was against the deliberate verdict at the general election. Sir, you will be laying us all under a very great obligation indeed, if you will kindly inform this House how many of the elected Members voted for the address, how many of the elected Members voted against and how many of the elected Members remained neutral."

The hon. the PRESIDENT :—"It is a very unusual request, but I take it, it is due to the unusual circumstances. I hope it will not be made a precedent binding myself or my successors. I think hon. Members are aware that 108 Members voted, 43 *for* and 65 *against* the motion. All the 43 Members who voted for the address were elected Members (Applause). Of the 65 Members who voted against the address, 44 were elected Members."

Mr. C. RAMALINGA REDDI :—"Including the Ministers, Sir"?

The hon. the PRESIDENT :—"The Ministers are also elected Members."